

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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5 LASZLO GASPAR, *et al.*,

6 Plaintiffs,

7 vs.

8 SUPERSHUTTLE LAS VEGAS, LLC,

9 Defendant.

2:15-cv-02149-APG-VCF

ORDER

10 Order Granting Motion for Partial Rehearing (#36) and Denying, Without Prejudice, Equitable
11 Tolling of the FSLA Statute of Limitations.

12 Before the court is Plaintiff's Motion (#36) for Magistrate Judge to Reconsider Magistrate Judge
13 Order #34. The same filing was also styled as an Objection (#35) to the same order. On February 26,
14 2016, an order (#37) was entered informing the parties that this filing would be treated as a motion for
15 reconsideration by the Magistrate Judge, rather than an objection. A briefing schedule was set. Defendant
16 filed a response (#38) and Plaintiffs filed a reply (#39).

17 On January 6, 2016, the parties filed a Proposed Discovery Plan and Scheduling Order (#24). This
18 filing contained the parties' conflicting positions on how discovery should proceed. The court set a hearing
19 to resolve these conflicts. The hearing was held on January 28, 2016. The parties were able to resolve
20 their differences, and a deadline of February 5, 2016, was set for the filing of a new discovery plan.

21 On February 5, 2016, the parties filed a new Discovery Plan and Scheduling Order (#30), which
22 was approved and entered as presented on February 8, 2016 (#33). This order requires "Phase One" Non-
23 Expert Discovery limited to all issues relevant to the Motor Carrier Act exemption in this case. (#33, at
24 2). September 15, 2016, is the date by which Phase One discovery must be completed (id.). Depending
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1 on the facts established during Phase one, the parties will file motions or seek guidance from the court on
2 how discovery should proceed beyond Phase One.

3 Consistent with this Discovery Plan and Scheduling Order, on February 10, 2016, the court entered
4 and order (#34), denying without prejudice the then pending Motion for Circulation of Notice of Pendency
5 of this Action (#18). This was a one page order. The only basis for denying the motion was the intervening
6 entry of a stipulated discovery plan and scheduling order that allowed for discovery limited to the
7 applicability of the Motor Carrier Act exemption in this case, and a possible summary judgment motion
8 by defendants based on this exemption, before the Motion for Circulation would be decided.

9 The court did not address Plaintiff's request for equitable tolling of the FSLA statute of limitations.
10 In these circumstances, it is appropriate to grant reconsideration of this request for tolling which was raised
11 in the Motion for Circulation and fully briefed.

12 Having considered the arguments presented in the Motion for Reconsideration briefing and also
13 the relevant portions of the Motion for Certification briefing, the court concludes that the issue of the
14 tolling of the FSLA statute of limitations need not be decided at this time. Once Phase One discovery is
15 completed, if the possible Motion for Summary Judgment by defendants based on the Motor Carrier
16 Exemption is filed, Judge Gordon will decide whether or not the case can proceed. If no Motion for
17 Summary Judgment is filed, or if resolution of a filed motion results in the case proceeding, the plaintiff
18 can file a new Motion for Circulation of Notice of Pendency of this Action. As part of that motion they
19 can renew their request for equitable tolling of the FSLA statute of limitations. Judge Gordon will then
20 be in a position to decide this tolling issue with the benefit of a fully developed record resulting from
21 Phase One discovery, and possibly a Motion for Summary Judgment.

22 Accordingly, IT IS HEREBY ORDERED that Plaintiffs' Motion for Magistrate Judge to
23 Reconsider Magistrate Judge Order (#36) is GRANTED.
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1 IT IS FURTHER ORDERED that Plaintiffs' request for equitable tolling of the FSLA statute of
2 limitations is DENIED WITHOUT PREJUDICE, to be renewed if appropriate, should plaintiffs file a new
3 Motion for Circulation of Notice of Pendency of this Action.

4 DATED this 11th day of March, 2016.

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7 CAM FERENBACH
8 UNITED STATES MAGISTRATE JUDGE
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